

BOARD OF PESTICIDES CONTROL

July 21, 2004

Colby/Thomas Room, Hampton Inn
425 Kennedy Memorial Drive, Waterville

AGENDA/MINUTES

9:30 A.M.

The regular monthly meeting was called to order at 9:34 A.M. by Chair Carol Eckert. Other members in attendance included Berry, Bradstreet, Humphreys, Simonds and Walton. Jemison was unable to be present.

1. Introductions of Board and Staff

- ☒ The members and staff introduced themselves and Eckert introduced Greg Gholson, Grant Program Administrator, from EPA Region I in Boston.

2. Public Hearing on Adoption of New Chapter 26 - Standards for Pesticide Applications and Notification for All Occupied Buildings Except K-12 Schools

The Board has patterned this proposed new rule after Chapter 27 that sets standards for pesticide applications and public notification in schools. Further details of the proposed rule were described in the public hearing notice published in major newspapers on June 30, 2003. Copies of the proposed rule are available upon request or may be viewed on the Board's web site at www.thinkfirstspraylast.org.

A sign up sheet will be available at the door for persons wishing to present information about the proposed rule. Written comments may be submitted to the Board's address above until 4:00 P.M. on Friday, August 13, 2004.

- ☒ A court reporter was present to record the public hearing and provide a separate transcript of this proceeding. The hearing record will remain open for written comments until 4:00 P.M. on Friday, August 13, 2004.

3. Minutes of the June 4, 2004 Board Meeting

Action Needed: Amend and/or Approve

- ☒ Batteese pointed out a typo on the bottom of Page 2 where Heat Start should read Head Start.

Simonds/Walton: Motion made and seconded to approve the minutes as amended.

In Favor: Unanimous

4. BASF's Request for 24c Registration for Arsenal to Allow an Increased Surfactant Rate When Used in Combination with Glyphosate for Jack Pine, Black Spruce, Red Spruce and White Spruce Release.

BASF has requested a Special Local Needs (24c) Registration for Arsenal (imazapyr) to allow a higher concentration of nonionic surfactant to be used when the product is mixed with Accord Concentrate (glyphosate). The current Arsenal label specifies a maximum surfactant concentration of 0.25% while the recommended rate of Entry II surfactant for use solely with Accord Concentrate is seven to nine times greater. This request is supported by three foresters who point out that tank mixes of Arsenal and Accord are often needed when difficult to control species are present, and that the current restriction on surfactant use reduces the efficacy of the glyphosate product. They further indicate that approval of this request should eliminate the need for second treatments and thereby reduce the total amount of herbicide used on a given acre of forest land.

Presentation By: Wesley C. Smith
Pesticides Registrar

Action Needed: Approve/Deny the 24c registration request.

- ☒ Smith informed the members that this was a simple request to increase the amount of surfactant to gain better efficacy when difficult to control species are present. Both Simonds and Ron Lemin of UAP provided additional clarification on the need to increase the amount of surfactant pointing out that research had been conducted to show the higher rate would not injure the desired seedlings.

Walton/Bradstreet: Motion made and seconded to approve the 24c registration request.

In Favor: Unanimous

5. Amendment of an Enforcement Policy Relating to Unlicensed Commercial Applicators of Disinfectants, Sanitizers and Other Antimicrobial Pesticides

On July 18, 2003, the Board voted to exercise enforcement discretion with respect to its licensing requirements for unlicensed applicators using antimicrobial pesticides for drinking water disinfection, sewerage treatment and treatment of swimming pools and spas. The Board reasoned that applicators conducting these types of treatments were already subject to formal certification or educational efforts administered through the Department of Human Services or the Department of Environmental Protection. At its June 4, 2004 meeting, the Board reviewed the curriculum for the Certified Pool/Spa Operator course offered by the National Swimming Pool Foundation (NSPF). Upon learning the NSPF instructor was willing to include information about pesticides and emphasize the need to follow the label in his courses, the Board asked the staff to amend its policy so enforcement discretion would only be exercised for those swimming pool/spa operators that are NSPF certified. The staff has drafted such a proposed amendment that would become effective on January 1, 2005.

Presentation By: Gary D. Fish
Certification & Licensing Specialist

Action Needed: Discussion and determination if the Board wishes to amend the July 18, 2003 Enforcement Policy until the Board is able to amend Chapter 31- Certification and Licensing Provisions for Commercial Applicators.

- ☑ Fish reminded the members of the previous discussion and recommended the policy not become effective until January 1, 2005. Eckert asked if the staff already had training materials for persons who did not take the NSPF course and he responded affirmatively. Eckert also noted the need for outreach to inform the applicators about the new policy and both Fish and Bourdeau promised to see that the information was disseminated.

Simonds/Humphreys: Motion made and seconded to adopt the amended enforcement policy.

In Favor: Unanimous

6. Review of Proposed Housekeeping Amendments to Chapters 10, 22, 24, 32, 41 and 50

At their annual planning session in May, the members reviewed the need to update several chapters of the Board's regulations. The staff explained that many revisions were required to incorporate various policies that the Board had adopted over the past few years. In addition, the current rules contain references to obsolete statutes, inconsistencies between chapters and definitions that need clarifying language. There was general agreement that the staff should bring recommended changes to the Board's attention as time permits. The staff has now prepared amendments to six chapters addressing many of the changes that seem to have been accepted by the regulated community and should not be deemed controversial. The staff will recommend that the Board initiate rule-making without a public hearing but with a 30 day comment period.

Presentation By: Robert I. Batteese, Jr.
Director

Action Needed: Discussion and determination if the Board is ready to initiate rule-making without a public hearing but with a 30 day comment period on any or all of the proposed chapters.

- ☑ Batteese walked the members through the staff recommended changes described in his memo of July 9, 2004. Jennings described the need to add nitrogen stabilizers to the definition of pesticides to be consistent with a recent federal change. It was also noted that in Chapter 24 the word petitioned should be changed to partitioned. Fish pointed out that EPA was currently reviewing each state's Plan for Certifying Applicators and recommending addition of several definitions to their regulations. There was consensus to wait until the next meeting when clarification on the need to include more definitions to Chapter 10 would be available.

7. Request from Town of Harpswell for Board to Amend Chapter 51 – Notice of Aerial Pesticide Applications to Require a Written Notice Also Be Provided to Municipalities

Section III. of the Board's Chapter 51 regulation currently requires the aerial applicator or the person contracting for aerial applications to control ornamental pests to provide

written notice to the Board and the Maine Poison Center. On May 20, 2002 the citizens of Harpswell adopted a municipal ordinance banning the aerial application of the insect growth regulators diflubenzuron and tebufenozide. Prior to that date an out of town landowner contracted with a Presque Isle based aerial applicator to treat 25 acres on Lower Goose Island in Harpswell with diflubenzuron to control Browntail Moths. Both the person arranging for the application and the aerial applicator were unaware of the new municipal ordinance when the application was made on May 27th. The Harpswell Town Administrator is requesting that the Board either adopt a policy or regulation that would require the Board or the professional applicator to provide written notification to each and every municipality in which an aerial spray project is being proposed. The Board's staff will point out it is not appropriate for the Board to assume responsibility for providing this notice to the municipalities. It will also remind the members they already have a longstanding list of proposed amendments that are needed to update several other chapters of the Board's regulations.

Presentation By: Robert I. Batteese, Jr.
Director

Action Needed: Discussion and decision on how the Board wants to proceed with this request.

- ☒ Batteese advised it was not appropriate for the Board to assume the responsibility of notifying municipalities and reminded the members they already had a long list of other needed changes to the regulations. Simonds stated he wished the application had not occurred but did not feel the Board should take any action. Berry indicated the contracting party should not be left out of the loop in the notification process. Eckert checked with the other members and concluded they were not willing to accept responsibility for notifying towns nor were they interested in initiating rule-making to require the applicator to notify towns. Instead, she asked staff to emphasize the need to check for local ordinances at this winter's applicator recertification meetings, and expressed belief that applicators will be well aware of the ordinance next year.

8. Consideration of Staff Negotiated Consent Agreement with TruGreen ChemLawn of Bangor

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance in matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case involves the commercial application of an herbicide to a residential property in Bangor where the owner had not requested a lawn care treatment. The unauthorized application constitutes a violation of the Board's Statute prohibiting pesticide applications in a careless, negligent or faulty manner.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

- ☒ Jennings explained that in the absence of written contracts he felt the burden should be on the applicator to show that he had permission to treat a property. In this case, he felt the owner had made it clear she did not wish to receive service from this company.

Humphreys/Berry: Motion made and seconded to approve consent agreement negotiated by staff.

In Favor: Unanimous

9. Other Old or New Business

a. Update on Pesticide Container Recycling - R. Batteese

- ☒ Batteese advised that Rob Denny of ACRC was close to signing an agreement with Norman Cyr at Northern Aroostook Regional Waste Facility to collect and bale the plastic and then ship it to an ACRC shredder for recycling. He also indicated Denny was seeking an agreement with Casella Waste Systems to perform the same function in central and southern Maine

b. Review of Draft Letter to Commissioner Spear
Requesting Action to Address impending Financial Problems – D. Simonds

- ☒ Simonds reported he had incorporated the changes recommended by various members and inquired if there were suggestions for any more revisions. There was consensus the language was fine and that all the members would like to attend the meeting if available.

c. Variance Permit Granted to Aroostook Arboriculture, Inc.
for Roadside Brush Control Program in Several Municipalities – R. Batteese

- ☒ Batteese advised this was for informational purposes only.

d. Variance Permit Amended for RWC, Inc. to Include
Fort Fairfield Branch of Bangor & Aroostook Railroad – R. Batteese

- ☒ Batteese advised this was for informational purposes only.

e. Update on Development of Yardscapes Program – K. Bourdeau

- ☒ Bourdeau provided a brief summary of the how the stakeholder group chose this new name to extend the Bayscaping program. She indicated two artists were still developing proposals for a logo, and that the City of Portland was cooperating on the establishment of up to three demonstration sites. She indicated a media campaign would be launched next spring.

f. Other ???

- ☒ None

10. Schedule and Location of Future Meetings

a. Location and date for the next meeting.

☒ The Board scheduled the next meeting for Wednesday, September 8th in the Waterville area.

b. Location and date for the following meeting.

☒ The Board decided to wait until the next meeting to set the date for the following meeting.

11. Adjourn

☒ A motion to adjourn was accepted at 12.40 P.M.

Robert I. Batteese, Jr.
Director